

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

HERLINDA C. MAYO,

Plaintiff,

vs.

No. CIV 02-0222 JB/RLP

FOWLER FITNESS, INC.,  
(d/b/a Defined Fitness),

Defendant.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on Plaintiff Herlinda C. Mayo's: (i) Motion - Petition Execution of Judgment Against Employee Denied to Employer, filed July 9, 2004 (Doc. 159); and (ii) Motion-Petition Execution of Judgment Against Plaintiff to be Denied to Defendant by this United States District Court, filed July 9, 2004 (Doc. 158). The primary issue is whether the Court has jurisdiction or authority to entertain Mayo's motions. Because Mayo has not, in her motions, explained under what authority the Court can or should entertain her motions, this Court will deny her motion without prejudice to her ability to refile them with a discussion of the Court's jurisdiction and authority to hear and decide her motions.

**PROCEDURAL BACKGROUND**

On August 27, 2003, the Court granted the Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed May 30, 2003 (Doc. 70). See Memorandum Opinion and Order, filed August 27, 2003 (Doc. 90). Mayo appealed that order and her appeal remains pending. See Notice of Appeal, filed September 26, 2003 (Doc. 98).

On October 8, 2003, the Court granted the Defendant's Motion for Summary Judgment, filed

May 29, 2003 (Doc. 72). See Memorandum Opinion and Order, filed October 8, 2003 (Doc. 99). That same day, the Court entered a Final Judgment (Doc. 100).

On February 4, 2004, the Court granted counsel for Mayo's Motion to Withdraw as Counsel. See Order, filed February 4, 2004 (Doc. 118). Mayo appealed this Order. See Notice of Appeal, filed March 16, 2004 (Doc. 129). The Tenth Circuit dismissed that appeal as untimely.

On June 15, 2004, the Court granted the Defendant's Motion for Attorney's Fees and Costs, filed November 7, 2003 (Doc. 102). Mayo filed a Notice of Appeal from the order on June 22, 2004 (Doc. 156), and on June 24, 2004, Mayo filed another Notice of Appeal (Doc. 157), which the Tenth Circuit is treating as an amendment to the June 22 Notice. The appeal from the order granting the Defendants fees and costs remains pending before the Tenth Circuit.

The two motions Mayo has now filed are very similar in their language and requests. While both were filed in the United States District Court for the District of New Mexico, Doc. 159 is addressed to the Tenth Circuit. Neither informs the Court clearly what Mayo wants.

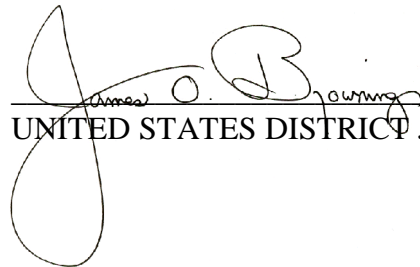
Portions of Mayo's motions appear to be asking this Court to reconsider, or the Tenth Circuit to review, each of the Court's orders. Other portions seem to be asking the two courts to stay execution of the order requiring her to pay some of the Defendant's fees and costs. Otherwise, it is difficult to determine what Mayo wants.

### **DISCUSSION**

Mayo did not appeal some of what Mayo complains; she did appeal from some issues, and the Tenth Circuit dismissed her appeal; and some issues remain before the Tenth Circuit. Mayo does not explain what, if anything, the Court has jurisdiction or authority to hear. The Court will dismiss her motions without prejudice. If she refiles her motions in this Court, she needs to explain how the

Court has jurisdiction or authority to decide her motions and what relief she seeks from the Court.

**IT IS THEREFORE ORDERED** that the Plaintiff's Motion-Petition Execution of Judgment Against Plaintiff to be Denied to Defendant by this United States District Court (Doc. 158) is denied without prejudice to the extent it is addressed to the District Court and the Motion-Petition Execution of Judgment Against Employee Denied to Employer is denied without prejudice (Doc. 159). If the Plaintiff refiles these motions in the District court, she shall explain in detail and with specificity how the Court has jurisdiction and authority to hear her motions.



UNITED STATES DISTRICT JUDGE

*Counsel:*

Herlinda Mayo  
Albuquerque, New Mexico

*Pro se Plaintiff*

Bryan T. Fox  
Tracy Wolf  
Fox & Wolf, P.C.  
Albuquerque, New Mexico

*Attorneys for the Defendant*